IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.406 OF 2003

Bhaskar Timappa Shetty]
Hindu, Indian Inhabitant]
residing at H-9, 135/136, Kedar]
Lokpuram Road No.2, Thane] ... Petitioner

versus

1. Caste Scrutiny Committee]
Through its members :]
]
i) Mr.Prakash Sabade]
Addl.Commissioner]
ii) L.B.Mahajan, Divisional]
Social Welfare Officer]
iii) C.M.Tribhuvan]
Investigation Officer and]
Member Secretary Mumbai]
Division,]
All having office at Kokan]
Division, Konkan Bhavan,]
5th floor, Navin Mumbai]

2. Mr.V.M.Shivalkar, Hindu]
Indian Inhabitant,]
Residing at Dhankaudi, Pune]
3. Mr.Suresh Haribhao Lad,]
Hindu, Indian Inhabitant]
residing at Gandhi Nagar]
Pokhran Road No.2, Behind]
Shivsena Office, Thane.]
4. Bunts Sangha Bombay,]
a trust having registration]
No.F-514(BOM), having]
office at Buntara Bhavana]
Bhandary Estate, Kurla (E)]
Mumbai - 400 070.]
5. The Collector, Thane]
6. Thane Municipal Commissioner]
Thane Municipal Corporation]
Thane, Dr.Almeida Road,]
Panchapakhadi, Thane]
7. The State of Maharashtra] .. Respondents.

Mr.A.Y.Sakhare i/by Mr.P.L.Mahadik with Shri S.S.Deshmukh for the Petitioner.

Mr.C.R.Sonawane, AGP, for State - Respondent

Nos.1, 5 and 7.

Mr.R.S.Apte for Respondent No.6.

CORAM : D.G.DESHPANDE

SMT.R.S.DALVI, JJ.

DATED : JANUARY 12, 2007.

JUDGMENT (IN CHAMBER) : [PER D.G.DESHPANDE, J]

1. Heard learned counsel Mr.Sakhare for the petitioner, learned advocate Mr.Apte for Respondent No.6 and learned AGP for the State - Respondents.

3. Even though there are other writ petitions being Writ Petition Nos.1916/2003, 2443/03 and 2444/03 shown along with this writ petition, learned counsel Mr.Sakhare did not make submissions in those matters, therefore, We are deciding the present matter being Writ Petition No.406 of 2003 only on the basis of submissions made by the respective advocates in this matter.

2. The petitioner, who is a resident of Thane, contested a election as a Corporator for Thane Municipal Corporation from Ward No.24(A)

which was reserved for scheduled caste. The petitioner, claiming to be a person belonging to the scheduled caste, contested that election for the seat reserved for scheduled caste category. A complaint was made by Respondent No.3 for scrutiny and cancellation of caste certificate of the petitioner. Respondent No.1 i.e. Caste Scrutiny Committee passed an order on 2.1.2003 cancelling the caste certificate of the petitioner and directing the Collector, Thane to initiate action against the petitioner. Respondent No.6 - Thane Municipal Commissioner issued a letter dated 7.1.2003 to the petitioner disqualifying him as a corporator from Ward No.24(A) of the Thane Constituency. This letter of Respondent No.6 is at Exhibit-A of this petition. It is this letter which is challenged by the petitioner, mainly, on the ground that the Commissioner has no powers to pass order about disqualification of the petitioner. So far as decision of the Caste Scrutiny Committee cancelling the caste certificate of the petitioner is concerned, We were informed by the counsel for the petitioner that the challenge to that order at the behest of the petitioner was unsuccessful through out.

3. Learned counsel Mr.Sakhare, appearing for the petitioner, therefore, made only one submission and, that is, that the Commissioner has no powers to disqualify the petitioner. Mr.Sakhare relied upon the judgment of the Division Bench (Justice Lodha and Justice Shah) in the case of **Martin Nirmal Moresh vs. State of Maharashtra,** reported in **[2001(4) Mh.L.J. 643]** and other two judgments of Justice Khanwilkar in the cases of **Sajeda Nihal Ahmed vs. Malegaon Municipal Corporation, Malegaon and others** reported in **[2005 (1) Mh.L.J. 87]** and **Madhukar Deoman Patil and others vs. State of Maharashtra,** reported in **[2004 (4) Mh.L.J. 485].**

4. The impugned communication (Exhibit-A) of the Municipal Commissioner, Thane dated 7.1.2003 to the petitioner is as under :-

> "As per the Order issued by the State Election Commission, Maharashtra dated 20.2.2002, your caste certificate was sent to the Divisional Commissioner, Konkan Division.

The Office of the Divisional Caste Verification Committee Kokan Bhavan has informed by the letter under above reference (i.e. letter dated 2.1.2003) that the caste certificate is invalid.

Since you were elected in the reserved seat of the Scheduled Caste for Ward No.24(A) in the General Election of the Thane Municipal Corporation held in 2002 on the basis of false caste certificate as the Corporator, you are declared as disqualifying under section 10 Sub Section (1B) and (1C) of the Bombay Provincial Municipal Corporations Act, 1949."

5. For easy reference We are reproducing Section 10 (1B)(a) and (1B)(b) as under :-

"(a). A person shall be disqualified for being a Councillor or for contesting an election for being elected as a Councillor, for a period of six years, if, an order is passed by the concerned

> authority, under section 12 or as the case may be, section 16, holding that such person was elected as a Councillor to a seat which was reserved for a member belonging to a Scheduled Caste, Scheduled Tribe or a Backward Class of citizens (hereinafter referred to as "a reserved category"), on the basis of a false claim or a false Caste Certificate declaring that such person belonged to such reserved category"
>
> "(b). Such period of disqualification shall be computed with effect from the date of passing of such order by the concerned authority."

We are also reproducing Section 10(1C)(a) and (b) as under :-

> "(a). Notwithstanding anything contained in sub-section (1B), a Councillor who has been elected to a reserved seat as mentioned in sub-section (1B), shall be disqualified for being such Councillor consequent upon the Caste Certificate

Verification Committee or any other Competent Authority specified by the State Government for the purpose of scrutiny of the Caste Certificates, declaring the Caste Certificate of such Councillor to be invalid and cancelling the same, on the ground of the same having been based on a false claim or declaration made by such person claiming, to be belonging to the reserved category, and thereupon the Councillor shall be deemed to have vacated his office on and from the date of declaration of such certificate to be invalid and cancellation of the same by the said Committee or the Competent Authority.

(b). On any person having been disqualified for being a Councillor and consequently, his seat as such Councillor having become vacant under clause (a), the State Government shall, by notification in the Official Gazette, disqualify such person for being elected or being a Councillor for a period of six years from the date of such Order."

6. In the Division Bench's Judgment in the case of **Martin Nirmal vs. State of Maharashtra,** the petitioner was an elected Councillor/Corporator from Ward No.23 of Nagpur Municipal Corporation, which was reserved for Scheduled Caste candidate. He defeated one Sheshrao Wasnik and Rajendra Tembhurne. Sheshrao Wasnik filed Election Petition questioning petitioner's election and, Rajendra Tembhurne made complaint to the Divisional Social Welfare Officer (Caste Scrutiny Committee) to invalidate the petitioner's caste certificate. The said order of Caste Scrutiny Committee invalidating petitioner's caste claim was challenged by petitioner in W.P. No.2296 of 2000. That petition was dismissed on 28.8.2000 and, the Commissioner, Nagpur Municipal Corporation, Nagpur, therefore, informed the petitioner that since the petitioner's caste claim was rejected and the writ petition was dismissed, the petitioner was not qualified to be elected as Councillor and had ceased to be a Councillor under Section 19(a) of the Act of 1948. It was this order that was challenged before the Division Bench.

7. The Division Bench held that the communication of the Commissioner was wholly without jurisdiction and amounts to usurping the power of Election Tribunal under Section 428 of the Act of 1948. It is this part, that is heavily relied upon by the learned counsel Mr.Sakhare in support of his submissions in this matter. However, the facts in that case are somehow different. The Division Bench in the same Para-4 noted as :-

> "Even if we assume that the question regarding caste claim of petitioner has attained finality, which is in fact, has not in view of review application filed by petitioner and order of status-quo passed thereon, then also the question that the petitioner being not Scheduled Caste could not have contested the election from Ward No.23, which was reserved for Scheduled Caste, the only forum which could invalidate petitioner's election as Councillor would be the election Tribunal under Section 428. Thereafter it is for the State Government

to issue necessary notification declaring the seat to be vacant."

8. Then in Para 5, the Division Bench noted as :-

"On facts, it may be noted that though petitioner's caste claim was invalidated by the Divisional Social Welfare Officer vide communication dated 8-6-1999 and the petitioner's writ petition challenging the said order came to be dismissed on 28-8-2000 but this Court on the review application filed by petitioner while issuing notice to respondents vide order dated 18-10-2000 has ordered status-quo as obtaining on that day to be maintained. Therefore, it cannot be said that the question regarding petitioner's caste claim has attained finality since Review Application is already pending before this Court."

9. It will be clear from the aforesaid facts in that matter that when the Commissioner passed order, the matter regarding caste of the

petitioner had not attained finality and, therefore, in that view of the matter, the observations of the Court that the communication of the Commissioner is without jurisdiction are proper.

10. In the judgment of Single Bench (Justice Khanwilkar) in the case of **Sajeda vs. Malegaon Municipal Corporation,** as referred above, the petitioner was elected as a Councillor of the Malegaon Municipal Corporation. She was later on elected as Chairman of the Standing Committee. While in Office, the petitioner was prosecuted in respect of offence punishable under Sections 353, 504 and 506 of the Indian Penal Code and, she was held guilty of the said offences by the Criminal Court on 8th January 2004. The petitioner challenged her conviction by filing appeal. She was on bail as the sentence was suspended. But the order of conviction was not expressly stayed by the Appellate Court.

11. Thereafter, the Municipal Commissioner issued show cause notice to the petitioner calling upon her to show cause as to why action should not be taken against her for having

incurred disqualification under section 10(1)(a) of the Act. The petitioner submitted explanation in response to the said show cause notice and contended that the matter is pending in appeal and the order of conviction was not operating. She also disputed the fact that the conviction so recorded by the Criminal Court would involve moral turpitude. Therefore, according to her there was a dispute, whether the petitioner has incurred disqualification or not, and therefore, the Municipal Commissioner could not have proceeded with the matter further, but was obliged to make reference under section 12(1) of the Act to the Judge. The Single Bench, relying upon its earlier judgment in the case of Madhukar Patil vs. State of Maharashtra, upheld the contention of the petitioner and allowed the petition as the order of the Commissioner was being without jurisdiction.

12. In the another judgment of the Single Bench (Justice Khanwilkar) in the case of **Madhukar Patil and others vs. State of Maharashtra** also the Municipal Commissioner had issued show cause notice to the petitioner that they had incurred disqualification in terms of

section 10(1)(f) of the Bombay Provincial Municipal Corporations Act, 1949. The petitioners filed their explanation to the show cause notice, but the Commissioner without making reference to the Judge as contemplated under Section 12(1) of the Act, proceeded to passed order of disqualification.

13. From the bare facts of these three judgments, it will be clear that in all of them the Issues were totally different. In the matter before the Division Bench, the order on caste certificate of the petitioner had not attained finality on account of pending review petition and status-quo order and, in the two matters before the Single Judge, disqualifications were incurred under altogether different provisions.

14. In the case before us, as clearly provided by Section 10(1C)(a), the petitioner contested election from the reserved seat shall be disqualified for being such Councillor consequent upon the Caste Certificate Verification Committee (Stress Added), declaring the Caste Certificate of such Councillor to be invalid and cancelling the same.

15. This wording of Section 10(1C)(a) of the Act makes it abundantly clear that as soon as the Caste Scrutiny Committee invalidates and cancels Caste Certificate of a Councillar, such Councillor stands disqualified. This Section 10(1C)(a) further provides that thereupon the Councillor shall be deemed to have vacated his office on and from the date of declaration of such Certificate to be invalid and cancellation of the same by the said Committee. This part of the provisions of Section 10(1C)(a) clearly states that as soon as the Caste Certificate is invalid and cancelled, the seat becomes vacant.

16. The Legislature has not made any provision to defer the decision of Caste Scrutiny Committee. The Legislature has regarded the decision of Caste Scrutiny Committee as final in this regard and, as soon as it decides the question against elected candidates, he becomes disqualified and the seat becomes vacant. The Legislature does not say that any other authority is required to make a declaration in that regard. Falling of seat vacant is a natural consequence

to be immediately followed or which immediately follows by cancellation of Caste Certificate. It is true that a person has right to challenge the decision of Caste Scrutiny Committee before the High Court. But nothing was pointed out before us by learned counsel Mr.Sakhare that from the date of letter dated 2.1.2003, referred by the Commissioner in his letter dated 7.1.2003 (Exhibit-A), any petition challenging the decision of Caste Scrutiny Committee was filed by the petitioner and, if filed, any stay in between was granted by the High Court. No submissions in this regard were made, but We were informed that the petitioner's attempt in the High Court was unsuccessful.

17. In view of this fact, none of the three judgments, cited by learned counsel Mr.Sakhare, is applicable and helpful to the petitioner. When Sub-sections (1B)(a)(b) and (1C)(a)(b) of Section 10 of the Bombay Provincial Municipal Corporations Act, 1949 are absolutely clear and provide full mechanism for a particular kind of disqualification, then those provisions are required to be given effect to as they are. It

may be that a Councillor, aggrieved by a decision of Caste Scrutiny Committee, may file writ petition and obtain stay to the said order. But excepting that remedy and intervention of the Court, no authority or authorities are envisaged to make formal decision declaring of the seat becoming vacant after the decision of Caste Scrutiny Committee. The wordings of Section 10(1C)(a) are absolutely clear in that regard.

18. Mr.Sakhare, the learned counsel appearing for the petitioner, tried to placed reliance upon Section 12 of the Act of 1949. The Section 12 reads thus :-

> "(1). If any doubt or dispute arises whether a councillor has ceased to hold office as such under section 11, such councillor or any other councillor may, and at the request of the Corporation, the Commissioner shall, refer the question to the Judge.
>
> (2). On a reference being made to the Judge under sub-section (1) such

> councillor shall not be deemed to be disqualified until the Judge after holding an inquiry in the manner provided by or under this Act determines that he has ceased to hold office."

Mr.Sakhare, therefore, contended that in case of doubt or dispute of the nature contemplates in Section 12, it was obligatory upon the Commissioner to refer the question to the Judge. We are not in agreement with this submission made by learned counsel Mr.Sakhare. This is not a case where Section 12 is attracted or can be placed in to service at all. When sub-section (1C)(a) of Section 10 of the Act of 1949 provides that a Councillor shall be disqualified for being such Councillor consequent upon the declaration by the Caste Certificate Verification Committee that his certificate is invalid and, therefore, cancelled, and when in fact such decision was given against the petitioner by Respondent No.1, then there is no question of doubt or dispute whether the petitioner has ceased to hold office or not. It is altogether different that the petitioner could have and had challenged the decision of Caste Scrutiny Committee before the

High Court, but the fact that the seat falls vacant is a natural consequent of the decision of Caste Scrutiny Committee and no doubt can be there in that regard. This may not apply to other kind of disqualifications contemplate by Section 10 of the Act of 1949. However, that is totally different issue.

19. For all these reasons, We are not in agreement with the submissions made by learned counsel Mr.Sakhare for the petitioner that the communication of Commissioner is being without jurisdiction. What the Commissioner has actually done is, of giving mere intimation to the petitioner of the consequences contemplated in sub-sections (1B) and (1C) of Section 10 of the Act. He has not decided the issue of disqualification. He did not enter into that arena of giving show cause notice, calling upon reply and deciding whether the petitioner has incurred disqualification or not. He has simply received the letter dated 2.1.2003 from Caste Scrutiny Committee and the consequences provided by sub-sections (1B) and (1C) of Section 10 of the Act are brought to the notice of the petitioner. Therefore, Exhibit-A is neither the

order of Commissioner nor the decision regarding caste claim of the petitioner. He has not decided that issue at all and, that issue was decided by the Caste Scrutiny Committee separately, and independently with all powers to decide the same.

20. There are two parts contemplated by Section 10(1C)(a) and (1C)(b). Sub-section (1C)(a) provides that upon decision of the Caste Certificate Verification Committee, the councillor shall be deemed to have vacated his office from the date of such declaration and, sub-section (1C)(b) provides that after the seat becomes vacant, the State Government, shall, by notification in the Official Gazette, disqualify such person for being elected or being a councillor for a period of six years from the date of such order.

21. Therefore, so far as second part is concerned, i.e. further disqualification of the petitioner for a period of six years, it is and it was necessary for the State Government to issue notification in the Official Gazette. That is the requirement of law, which is not followed

in this matter. At least nothing was brought to our notice by the respondents in this regard.

22. The prayers in this petition are, for setting aside and quashing the letter dated 7.1.2003 as being ab initio void and also for quashing the letter of Respondent No.1 dated 2.1.2003 and report dated 20.11.2002 of Respondent No.2.

23. So far as report dated 20.11.2002 of Respondent No.2 and, the order dated 2.1.2003 of Respondent No.1 are concerned, no submissions were made before us at all. Therefore, We are not considering those aspects of the matter. So far as letter dated 7.1.2003 (Exhibit-A) of the Commissioner is concerned, We hold that it is merely a communication of legal consequences and, not an order of the Commissioner regarding disqualification of the petitioner. The consequences are provided under Section 10(1B)(a)(b) and (1C)(a)(b). Therefore, the net result is that the seat of petitioner falls vacant from 2.1.2003. The petition is, therefore, dismissed. We only clarify that for further declaration, the State Government will

have to issue notification in the Official Gazette as contemplated under sub-section (1C)(b) of Section 10 of the Act of 1949. Till then We clarify that since the caste certificate of the petitioner is invalid, he will not be able to contest from any reserved seat. The petition is disposed of accordingly.

[D.G.DESHPANDE,J]

[SMT.R.S.DALVI, J]